IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23140 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVINDBHAI JETHABHAI PATEL - Petitioner(s)
Versus
MAMLATDAR & 4 - Respondent(s)

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Appearance :

MR JV JAPEE for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.
MR DIPEN DESAI, AGP for Respondent(s) : 4,
UNSERVED-REFUSED (N) for Respondent(s) : 4,
MR SN THAKKAR for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/12/2006

ORAL JUDGMENT

1. Rule. Mr.Desai, learned AGP waives service of

notice of Rule for Respondents No.1, 2, 3 and 4 and Mr.Thakkar, learned Counsel for Respondent No.5. With the consent of the learned Counsel appearing for both the sides, the matter is further heard finally today.

2. The petitioner has preferred the petition for appropriate writ to direct Respondent No.4 to dispose of the application for interim injunction filed by the petitioner in Revision Application No.36 of 2006 within a stipulated time limit. When this Court considered the matter for the first time on 13.11.2006, following order was passed:

> *"1. Mr.J.V. Japee, learned counsel appearing for the petitioner states under the instructions of his client that the petitioner is ready to abide by any condition which may be imposed by this Court for saving the land of the petitioner. He further states that the principal amount to be paid is of Rs.60,000/- which the petitioner is ready to deposit. Further, the petitioner is also ready to pay the compensation to the auction purchaser in case, this Court finds it proper to award the*

interest at the rate of 12% to the auction purchaser from the date of deposit till the actual refund. He further states that the petitioner is also ready to deposit the amount that this Court may find it proper towards probable cost of the litigation to the auction purchaser and the Special Recovery Officer and he states that the possession is up till now with the petitioner.

2. In view of the above, notice returnable on ***21.11.2006****. There shall be status quo qua the possession and the maintenance of the revenue record of the land in question on condition that the petitioner deposits the amount of Rs.1 lac towards unpaid amount and the compensation to be paid to the auction purchaser etc., and the amount of Rs.10,000/- of probable cost to the auction purchaser and the Special Recovery Officer both, totaling to amount of Rs.1,10,000/- shall be deposited with this Court on or before 16.11.2006. Direct service of permitted."*

It appears from the receipt produced in the record that the petitioner has deposited the

amount of Rs.1,10,000/- with this Court on 15.11.2006.

3. I have heard Mr.Japee, learned Counsel for the petitioner, Mr.Desai, learned AGP for the State Authorities and Mr.Thakkar, learned Counsel for the private respondent.

4. It appears that there is no dispute on the point that the decree was passed and as per the decree the petitioner has to pay the amount by instalments failing which, on the outstanding amount, the petitioner had to pay interest at the rate of 18% per annum. It also appears that the cheques were issued by the petitioner, which were bounced and the criminal prosecutions were filed against the petitioner and pending the said proceedings the payments were made by the petitioner and the criminal prosecutions were withdrawn. There is no dispute on the point that the petitioner has, prior to the auction, deposited an amount of Rs.1,50,000/- plus Rs.1,05,000/- totalling an amount of Rs.2,55,000/- with the Special Recovery Officer and, therefore, if the principal amount is

calculated out of Rs.3,15,000/-, the petitioner had deposited the amount of Rs.2,55,000/- and consequently the principal outstanding amount was of Rs.60,000/-.

5. Mr.Desai, learned AGP under the instructions of the Special Recovery Officer, declared before the Court that if the delay interest at the rate of 18% p.a. is calculated, roughly it would be Rs.1,30,000/- and, therefore, if the said amount of interest is added, the consequence would be that the amount of Rs.1,90,000/- remains as outstanding to the petitioner even as per the Special Recovery Officer, subject to the exact finalization of the interest amount.

6. Mr.Thakkar, learned Counsel appearing for the auction purchaser has declared before the Court and the said position is confirmed on behalf of the Special Recovery Officer by Mr.Desai, learned AGP that the amount of Rs.2,15,000/- was already deposited with the Special Recovery Officer by the auction purchaser on the date when the auction took place of the land in question.

7. As per the petitioner, the price of the land is approximately Rs.10,00,000/-, including the irrigation facility, well, etc., and it is sold out at Rs.2,15,000/-, whereas as per the Special Recovery Officer, the upset price fixed was Rs.50,000/- per acre and the land admeasuring is about 1 acre 25 gunthas and the amount of Rs.2,15,000/- is a reasonable amount fetched of the land. I find that it may not be required for this Court to conclude on the said aspects, as the matter is at large to be considered by the State Government in the pending revision.

8. However, as the learned Counsel appearing for both the sides have agreed that the matter may be considered by this Court for the purpose of interim order in either way until the State Government decides the revision application and the State Government may be directed to decide the revision application within some stipulated time limit, I find that no further detailed discussion may be required in this regard. However, suffice it to observe that if the petitioner is ready to deposit the full amount

outstanding of the society which, even as per the Special Recovery Officer, is about Rs.1,90,000/- towards principal and the interest due and if the petitioner is further ready to deposit the amount of cost of the litigation of the Special Recovery Officer and the interest by way of compensation to the auction purchaser on the amount already deposited and also cost to the auction purchaser, the matter can be considered for granting interim direction to the extent that the land of the petitioner, which as per him is of Rs.10,00,000/-, may not be further parted with for the consideration of Rs.2,15,000/- and the State Government may ultimately finalize the issue.

9. At this stage, Mr.Japee, learned Counsel appearing for the petitioner, under the instruction of his client, declared that the additional amount as may be fixed by this Court shall also be deposited by the petitioner with the Special Recovery officer on or before 15.12.2006, however, he submitted that the appropriate direction may be given for giving

appropriate credit, which ultimately may be finalized by the State Government in the revisional proceedings.

10. If the interest at the rate of 12% is counted on the amount of Rs.2,15,000/-, which is already deposited by the auction purchaser, the same would be roughly not more than Rs.5,000/- for compensating the loss, if any, caused to the auction purchaser and Rs.5,000/- can additionally be considered towards cost to the auction purchaser, in the event ultimately the auction is cancelled. However, if the auction purchaser is not desirous to withdraw the amount from the Special Recovery Officer and wants to continue with the auction by maintaining the same, the entitlement of the interest by way of compensation or the cost would not accrue to the auction purchaser and further continuation or participation in the proceedings shall be on his own risk and peril. So far as the Special Recovery Officer is concerned he, in any case, is acting as a quasi judicial authority for recovery of the amount and, therefore, the

paramount consideration would be to recover the amount as outstanding as per the decree. Therefore, I find that while considering the matter for passing interim order the rights of the parties are required to be balanced properly so that in the event the proper order is passed by the State Government, sufficient care is taken of the situation and the development accrued pending the revision proceedings before the State Government.

11. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:-

(a) The petitioner shall deposit the amount of Rs.2,10,000/- with the Special Recovery Officer on or before 15.12.2006. Out of the amount of Rs.2,10,000/-, as the petitioner has already deposited the amount of Rs.1,10,000/- with this Court, the special Recovery Officer shall be at liberty to withdraw the amount from this Court and shall be at liberty to credit the amount as per the direction given hereinabove towards

the amount to be deposited by the petitioner. Consequently the petitioner would be required to deposit the net amount of Rs.1,00,000/- with the Special Recovery Officer on or before 15.12.2006.

(b) The aforesaid amount of Rs.2,10,000/- shall be credited by the Special Recovery Officer as Rs.60,000/- towards principal outstanding, Rs.1,30,000/- towards interest at the rate of 18% on the delayed payment, Rs.5,000/- towards his cost and the cost of the present litigation, Rs.5,000/- towards the interest to be awarded by way of compensation to the auction purchaser and Rs.5,000/- towards the cost to the auction purchaser.

(c) Within a period of two weeks after 15.12.2006, if the auction purchaser Respondent No.5 herein is desirous to withdraw himself from the auction and is desirous to take the amount of Rs.2,15,000/- with the interest at the rate of 12% p.a., from the date of deposit till the refund and

also is desirous to get the cost of Rs.5,000/-, he shall be at liberty to move appropriate application to the Special Recovery Officer for such purpose. If such application is made by Respondent No.5 to the Special Recovery Officer, within three days from the date of receipt of such application, the Special Recovery Officer shall refund the amount of Rs.2,15,000/- plus interest at the rate of 12% per annum from the date of deposit till actual refund and the amount of Rs.5,000/- towards cost to the auction purchaser. In the event the auction purchaser decides not to withdraw the amount or upon failure to make any such application as indicated hereinabove, no further liability would accrue by the petitioner to pay any interest towards compensation or cost as the case may be, if ultimately the auction is cancelled by the State Government or the higher forum known to law.

(d) The Special Recovery Officer,

within a period of four weeks from today, shall also calculate the exact amount of interest outstanding at the rate of 18% for the delay caused in payment of instalments by the petitioner and if any surplus amount remains from the aforesaid amount of Rs.1,30,000/- the same shall be refunded to the petitioner within a period of one week thereafter. In the event any amount of interest remains yet to be deposited by the petitioner, the petitioner shall be intimated accordingly, but till the matter is finalised by the State Government, no insistence shall be made for payment.

(e) The State Government shall decide the revision application against the decision of the Special Recovery Officer of auctioning property as per the Bombay Land Revenue Code read with Rules and while deciding the said revision application, the development for deposit of the amount by the petitioner including in the present proceedings and participation of the auction

purchaser, etc., shall be taking into consideration by the State Government and the matter shall be decided in accordance with law, without being, in any manner, influenced by the observations made by this Court at the time of passing the present order. However, in the event the State Government decides to confirm the action of the Special Recovery Officer, it would be required for the State Government to pass the consequential order of refunding the amount with interest, which the petitioner has deposited with the Special Recovery Officer in pursuance of the present interim arrangement and in the event it is ordered to cancel the auction or for re-auction of the property, the consequential order shall also be required to be passed by the State Government.

(f) The State Government shall decide the revision application as early as possible, preferably within a period of four months from the date of receipt of the order

of this Court and until the decision is taken by the State Government and the same is communicated to the petitioner by Registered A.D. Post and for a period of one week thereafter, the possession of the land in question, which is with the petitioner, shall not be disturbed. The auction purchaser shall also be impleaded as party to the proceedings by the petitioner and the auction purchaser shall also be heard in the event the amount is not withdrawn and he decides to pursue the proceedings. The aforesaid direction shall be without prejudice to the rights and contentions of both the sides to approach before the higher forum in the event either party is aggrieved by the final order, which may be passed by the State Government.

12. The petition is disposed of in terms of the aforesaid observations and directions. Rule is made absolute accordingly. Direct service is permitted.

1.12.2006 **(Jayant Patel, J.)**

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